



U.S. Department of Commerce
National Oceanic and Atmospheric Administration



U.S. Environmental Protection Agency

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The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of Oregon's Implementation Ready (IR) TMDL approach for the Mid-Coast sub-basin and its ability to achieve and maintain water quality standards and enable Oregon to satisfy the condition on its Coastal Nonpoint Program for additional management measures for forestry. This letter responds to the Final Settlement Agreement for Northwest Environmental Advocates v. Locke, et. al, Civil No. 09-0017-PK. Specifically, EPA and NOAA agreed to provide the Oregon Department of Environmental Quality (DEQ) with an initial written assessment by December 31, 2012 on:

- whether implementation of the Oregon Coastal TMDL approach (now referred to as the Implementation-Ready or IR-TMDL approach), including safe-harbor best management practices (BMPs), in the Mid-Coast sub-basins is likely to result in actions that will achieve and maintain water quality standards (WQS); and
- whether Oregon's plan for developing and updating TMDLs for all sub-basins in the Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) management area using the Implementation-Ready TMDL approach could satisfy the outstanding forestry condition on the state's Coastal Nonpoint Program.

EPA and NOAA have considered many documents in making our assessment, including comments the plaintiff provided regarding the IR-TMDL for the Mid-Coast and BMPs. . However, . when EPA and NOAA negotiated this milestone in the settlement agreement, we did so on the assumption that DEQ would have completed the Mid-Coast TMDLs by June 30, 2012 according to DEQ's July 21, 2010 commitment letter. That letter also states that other interim benchmarks such as providing additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets would have been achieved by January 31, 2011.

EPA and NOAA recognize the complexities of pursuing this new, innovative, IR-TMDL approach. While we applaud your achievements including collected and beginning to analyze data necessary for the TMDL development, organizing and holding many stakeholder advisory and technical meetings, and outlines promising approaches, we are very disappointed that many of the original deadlines have slipped significantly. DEQ has yet to adequately complete the benchmarks noted above and does not anticipate completing the Mid Coast TMDLs until Summer 2013 or later. There has been limited progress on developing and identifying the best practices which are key to meeting both water quality standards and the outstanding coastal nonpoint program conditions.

Therefore, without a completed Mid-Coast TMDL that includes specific BMPs and better understanding of how the TMDL process will address landslide prone and road issues, EPA and NOAA do not have sufficient information to conclude if the IR-TMDL approach would enable Oregon to achieve and maintain water quality standards or satisfy the additional management measures for forestry condition on its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns that the current approach would enable the state to achieve either goal.

The enclosed assessment document provides additional information on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current short-comings, and what the state needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we've shared with the state in the past, we must receive all information from Oregon satisfying its three remaining conditions by June 30, 2013, in order to meet this deadline. EPA and NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by the November 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 funding and Clean Water Act Section 319 program.

As we do not want to see the state lose critical funding that supports water quality and habitat protection, working with Oregon to achieve full approval of its Coastal Nonpoint Program continues to be a priority for NOAA and EPA. Both agencies will continue to work closely with DEQ to move its IR TMDL effort forward expeditiously and to enable the state to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director

Office of Ocean and Coastal Resource
Management
National Oceanic and Atmospheric
Administration

Daniel D. Opalski, Director

Office of Water and Watersheds
Environmental Protection Agency,
Region 10

cc: Dick Pedersen, Director, DEQ
Bill Blosser, Chair, EQC
Gene Foster, Watershed Management Manager, DEQ
Nina Bell, NWEA

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) Will the Implementation of the Implementation-Ready TMDL, in the Mid-Coast Sub-basins Likely Result in Actions to Achieve and Maintain Water Quality Standards?

[Add]

2) Will Oregon's Plan Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area using Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?

[Add]

3) Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the coastal nonpoint program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with the new guidance.

In its July 2012 letter to EPA and NOAA, ODEQ committed to completing a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for Designated Management Areas (DMAs) by June/July 2011. However, as of to date, ODEQ has yet to complete the guidance and the "final" draft EPA and NOAA reviewed in July 2012 still needed significant work.

While EPA and NOAA have been supportive of the potential of this approach for addressing the new development management measure requirements, we are very disappointed that the deadlines have slipped significantly. In addition, based on EPA and NOAA's review of the July 2012 "final" draft, *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area*, it is still unclear if the TMDL Implementation Plans developed would include practices consistent with the 6217(g) management measure for new development and if ODEQ has the authority to require implementation of the new development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). This gives us concern that this TMDL Implementation Plan Guidance for urban areas may not enable Oregon to satisfy its new development condition.

As ODEQ finalizes this guidance, it needs to make sure the guidance provides clear instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their Implementation Plans. (i.e., practices that will

reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

It was EPA and NOAA's understanding that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans, or at a minimum, ODEQ would have the ability to require implementation of the recommended new development management measure. While states are able to use voluntary approaches backed by enforceable authorities to meet their Coastal Nonpoint Program requirements (see EPA and NOAA's 1998 *Final Administrative Changes Memo*) statements in the July final draft appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution.

EPA and NOAA hope ODEQ can expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) *Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System Condition on its Coastal Nonpoint Program*

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point of sale inspections for systems within the coastal nonpoint program boundary. EPA and NOAA applaud Oregon's progress on rule development and the fact that it was on target for meeting benchmarks in its July 2012 commitment letter. The proposed rules require all OSDS within the coastal nonpoint program management area to be inspected by a professional engineer, registered environmental health specialist or wastewater specialist or a certified inspector at the time of property transfer and that those inspections be reported to ODEQ. The state has also provided a sample inspection form that provides for a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point of sale inspections and reliance on qualified inspectors, combined with the state's detailed inspection form, will enable the state to satisfy its OSDS condition when adopted.

EPA and NOAA are aware that ODEQ has decided to delay presenting the rules to the EQC for adoption until March 2013 to give them more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond the March. In addition, ODEQ must ensure that significant changes to

the rules do not occur so that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.



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Comment [AC1]: The settlement agreement says we are to provide ODEQ an assessment. The remaining programs are all under DEQ's control so may be appropriate just to address the letter to DEQ and cc' OR CZM program in DLCD.

The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of Oregon's Implementation Ready (IR) TMDL approach for the Mid-Coast sub-basin and its ability to achieve and maintain water quality standards and enable Oregon to satisfy the condition on its Coastal Nonpoint Program for additional management measures for forestry. This letter responds to the ~~In the Final Settlement Agreement in response to litigation between for Northwest Environmental Advocates v. Locke, et. al, Civil No. 09-0017-PK. Specifically, EPA and NOAA agreed to provide the Oregon Department of Environmental Quality (DEQ) and plaintiffs with an initial written assessment by December 31, 2012 on:~~

- whether implementation of the Oregon Coastal TMDL approach (now referred to as the Implementation-Ready or IR-TMDL approach), including safe-harbor best

Comment [AC2]: Settlement agreement says we send copy to Plaintiff. Therefore, Nina get's a cc. Don't think we need to include plaintiff's counsel too but perhaps lawyers feel otherwise.

Comment [AC3]: The cover letter can convey a few main points but I think it would be best to leave a lot of the detail to an enclosure to keep the letter, itself, short and sweet.

Comment [AC4]: We may want to remove this date if we won't get the final letter out in time.

- management practices (BMPs). Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain water quality standards (WQS); and
- whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP-Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) management area using the Oregon Coastal Implementation-Ready TMDL Approach could satisfy the outstanding forestry condition on the state's Coastal Nonpoint Program.

DEQ was unable to complete the draft or final TMDLs or even specific BMPs for addressing the NPS sources, as of the date of this letter. Therefore, EPA and NOAA cannot evaluate whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition.

In developing this assessment, EPA and NOAA have considered many documents in making our assessment, including agreed to consider comments the plaintiff provided regarding the IR-TMDL for the Mid-Coast and BMPs from plaintiff with respect to ODEQ's proposed TMDLs and BMPs. However, EPA was to base the initial assessment on Oregon's July 2, 2010, Attorney General's Opinion, the July 26, 2010, Oregon Department of Environmental Quality's (DEQ) commitment letter, the schedule for implementing the Oregon Coastal TMDL approach, and the Mid-Coast Basin TMDLs implementing the Oregon Coastal TMDL Approach. The Oregon Coastal TMDL Approach, also known as Implementation Ready (IR) TMDLs is a new process that will make TMDLs enforceable against nonpoint sources, as the Attorney General determined that ODEQ "has the authority to directly order compliance with the load allocations in a TMDL." EPA and NOAA considered all of the documents listed above, as well as the documents shown in the enclosure, when EPA and NOAA negotiated this milestone in the settlement agreement, we did so on the assumption that DEQ would have completed the Mid-Coast TMDLs by June 30, 2012 according to DEQ's July 21, 2010 commitment letter. That letter also states that other interim benchmarks such as providing additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets would have been achieved by January 31, 2011.

EPA and NOAA recognize the complexities of pursuing this new, innovative, IR-TMDL approach. While we applaud your achievements including collected and beginning to analyze data necessary for the TMDL development, organizing and holding many stakeholder advisory and technical meetings, and outlines promising approaches, we are very disappointed that many of the original deadlines have slipped significantly. DEQ has yet to adequately complete the benchmarks noted above and does not anticipate completing the Mid Coast TMDLs until Summer 2013 or later. There has been limited progress on developing and identifying the best practices which are key to meeting both water quality standards and the outstanding coastal nonpoint program conditions.

Comment [AC5]: Don't think we need to spell these out here. Our assessment should speak to them which will show that we have considered them. If we want, we could consider including an appendix listing all documents we considered as an enclosure and referencing that in the above sentence.

Also, we HAVE NOT considered the mid-coast TMDLs the state hasn't developed them yet. Our assessment needs to note this clearly that deadlines have slipped and we do not have the documents we believed we would at this point.

Comment [AC6]: What enclosure?

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Comment [AC7]: Add more specifics about the temp and sed. TMDLs? I'm not sure what the latest deadline is these days.

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Therefore, without a completed Mid-Coast TMDL that includes specific BMPs and better understanding of how the TMDL process will address landslide prone and road issues, EPA and NOAA do not have sufficient information to conclude if the IR-TMDL approach would enable Oregon to achieve and maintain water quality standards or satisfy the additional management measures for forestry condition on its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns that the current approach would enable the state to achieve either goal.

The enclosed assessment document provides additional information on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current short-comings, and what the state needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we've shared with the state in the past, we must receive all information from Oregon satisfying its three remaining conditions by June 30, 2013, in order to meet this deadline. EPA and NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by the November 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 funding and Clean Water Act Section 319 program.

~~As a crucial part of development of these IR TMDLs, DEQ agreed to develop the Mid-Coast Sub-basins IR TMDLs by June 30, 2012 using the new approach in order to demonstrate that DEQ can and will use TMDLs to control water pollution from logging. Specifically DEQ agreed to identify specific nonpoint sources (including logging) and best management practices (including the logging practices) necessary to meet the TMDL load allocations and issue these load allocations as enforceable orders to significant land owners and agencies. However, DEQ was unable to complete the draft or final TMDLs or even specific BMPs for addressing the NPS sources, as of the date of this letter. Therefore, EPA and NOAA cannot evaluate whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition.~~

NOAA and EPA recognize that the implementation-ready (IR) TMDL effort is a new and complicated undertaking. DEQ has made significant progress including:

- In March 2012, DEQ convened a series of Local Stakeholder Advisory Committee meetings for key stakeholders to provide input on the development of Mid-Coast Basin TMDLs and to assist with planning implementation-ready TMDLs. The LSAC is meeting regularly from March 2012 to June 2013. Three separate Technical Working Groups

(TWGs) began meeting monthly beginning in late spring to provide technical input into the development of bacteria, temperature and sediment TMDLs. EPA provided contractor support for the facilitation of these meetings.

- In Fall, 2012, Light Detection and Ranging (LiDAR) data was collected and analyzed, resulting in a map of existing landslides classified by slide type, material, age and other attributes. This technology and data analysis provides accurate data for identifying and mapping landslides, unmaintained roads and vegetation attributes which can be used in both the temperature and sediment TMDLs. EPA provided contractor support.
- DEQ developed and shared with the LSAC and TWGs conceptual technical approaches for the bacteria, temperature and sediment TMDLs. Specific accomplishments for each TWG included:

Bacteria TMDLs

- Identified initial estimates of parameter values for bacteria source modeling
- Selected methods to for developing TMDLs for freshwater, estuaries, and beaches
- Compiled available beach data
- Reviewed and discussed example load duration curve calculations
- Met with Big Elk Creek landowners and SWCD

Temperature TMDLs

- Reviewed and provided input to DEQ on data and available model calibration results, including assumptions and uncertainties
- Reviewed and discussed canopy density and how it is used in the Heat Source model
- Identified Site Potential Vegetation geographic regions and vegetation type categories.
- Reviewed RipStream site modeling results for two sites.
- Discussed (in overview) stream channel morphology and cold water refugia

Sediment TMDLs

- Developed draft forest roads approach for TWG review and comment
- Scheduled and held Forest Roads sub-group meeting
- Began developing details for forest roads approach
- Currently working to develop integrated roads document
- Assembled agricultural roads sub-group

Comment [AC8]: I think some of the high points can be integrated into our enclosed assessment but we don't need to include a laundry list. The state (and plaintiff) knows what they've done. They don't need us to tell them again. Instead, we need to provide some indication if these are headed in the right direction, and if so, what they need to continue to do to ensure the requirements are met, and if not, what do they need to do to take corrective action.

Oregon has encountered many unanticipated challenges including:

DEQ's authority to require and enforce management measures is key for EPA and NOAA to approve Oregon's Coastal Nonpoint Source Pollution Control Program (CNPSP) in Oregon under CZARA Section 6217 and also is key to implementing TMDLs that would lead to meeting WQS. We support DEQ's authority whether DEQ takes the direct approach of identifying the management measures (MMs) needed to meet the TMDL targets or whether DEQ takes the indirect approach of giving DMAs the first shot at identifying the MMs and then DEQ determines their adequacy and whether additional MMs are needed. If DEQ is taking the indirect approach, then DEQ needs to clarify the process and criteria that DEQ will use to evaluate DMA identified MMs and reaffirm DEQ's commitment and authority to require MM's if needed to meet IR TMDL targets/WQS.

Comment [AC9]: Some of these points may be better integrated into the enclosure.

As we do not want to see the state lose critical funding that supports water quality and habitat protection, Wworking with Oregon to achieve full approval of its Coastal Nonpoint Pollution

| ~~Control Program continues to be is a priority for NOAA and EPA. Both agencies will continue~~
| to work closely with DEQ to move its IR TMDL effort forward expeditiously and to enable the
| state to meet the other remaining conditions on its Coastal Nonpoint ~~Pollution Control Program.~~

Sincerely,

| ~~John King~~ Margaret Davidson, Acting Deputy Director
Director
Office of Ocean and Coastal Resource
Management
National Oceanic and Atmospheric
Administration

Daniel D. Opalski,

Office of Water and Watersheds
Environmental Protection Agency,
Region 10

Comment [AC10]: I think she would be Daniel's
equivalent.

cc: Dick Pedersen, Director, DEQ
Bill Blosser, Chair, EQC
| Gene Foster, Watershed Management Manager, DEQ
| Nina Bell, NWEA

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) Will the Implementation of the Implementation-Ready TMDL, in the Mid-Coast Sub-basins Likely Result in Actions to Achieve and Maintain Water Quality Standards?

[Add]

2) Will Oregon's Plan Developing Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area using Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?

[Add]

3) Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the coastal nonpoint program management area boundary; and
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Comment [AC11]: Add something about extent of TMDLs and types?

As ODEQ finalizes this guidance, it needs to make sure the guidance provides clear instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their Implementation Plans. (i.e., practices that will

reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

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EPA and NOAA hope ODEQ can expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) *Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System Condition on its Coastal Nonpoint Program*

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EPA and NOAA are aware that ODEQ has decided to delay presenting the rules to the EQC for adoption until March 2013 to give them more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond the March. In addition, ODEQ must ensure that significant changes to

the rules do not occur so that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.

Document Revisions
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Author: Allison Castellan
Date: 11/9/2012 2:30:00 PM
Type: Insert
Range: Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program)

Author: Allison Castellan
Date: 11/9/2012 2:30:00 PM
Type: Delete
Range: Oregon Coastal

Author: Allison Castellan
Date: 11/9/2012 2:31:00 PM
Type: Insert
Range: Implementation-Ready

Author: Allison Castellan
Date: 11/9/2012 2:31:00 PM
Type: Insert
Range: a

Author: Allison Castellan
Date: 11/9/2012 2:31:00 PM
Type: Delete
Range: A

Author: Allison Castellan
Date: 11/9/2012 2:32:00 PM
Type: Insert
Range: on the state's Coastal Nonpoint Program

Author: Allison Castellan
Date: 11/9/2012 5:06:00 PM
Type: Insert
Range:

Author: Allison Castellan
Date: 11/9/2012 5:28:00 PM
Type: Unknown
Range: DEQ was unable to complete the draft or final TMDLs or even specific BMPs for addressing the NPS sources, as of the date of this letter. Therefore, EPA and NOAA cannot evaluate whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition.

Author: Allison Castellan
Date: 11/9/2012 5:52:00 PM
Type: Delete
Range: DEQ was unable to complete the draft or final TMDLs or even specific BMPs for addressing the NPS sources, as of the date of this letter. Therefore, EPA and NOAA cannot evaluate whether implementation

of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition. In developing this assessment,

Author: Allison Castellan
Date: 11/9/2012 2:45:00 PM
Type: Delete
Range: /

Author: Allison Castellan
Date: 11/9/2012 2:45:00 PM
Type: Insert
Range: and

Author: Allison Castellan
Date: 11/9/2012 5:01:00 PM
Type: Insert
Range: have considered many documents in making our assessment, including

Author: Allison Castellan
Date: 11/9/2012 2:45:00 PM
Type: Delete
Range: agreed to consider

Author: Allison Castellan
Date: 11/9/2012 2:52:00 PM
Type: Insert
Range:

Author: Allison Castellan
Date: 11/9/2012 2:48:00 PM
Type: Delete
Range:

Author: Allison Castellan
Date: 11/9/2012 5:02:00 PM
Type: Insert
Range: the plaintiff provided regarding the IR-TMDL for the Mid-Coast and BMPs.

Author: Allison Castellan
Date: 11/9/2012 5:03:00 PM
Type: Delete
Range: from plaintiff with respect to ODEQ's proposed TMDLs and BMPs

Author: Allison Castellan
Date: 11/9/2012 5:53:00 PM
Type: Insert
Range: However,

Author: Allison Castellan

Date: 11/9/2012 5:53:00 PM

Type: Delete

Range: EPA was to base the initial assessment on Oregon's July 2, 2010, Attorney General's Opinion, the July 26, 2010, Oregon Department of Environmental Quality's (DEQ) commitment letter, the schedule for implementing the Oregon Coastal TMDL approach, and the Mid-Coast Basin TMDLs implementing the Oregon Coastal TMDL Approach

Author: Allison Castellan

Date: 11/9/2012 5:05:00 PM

Type: Delete

Range: The Oregon Coastal TMDL Approach, also known as Implementation Ready (IR) TMDLs is a new process that will make TMDLs enforceable against nonpoint sources, as the Attorney General determined that ODEQ "has the authority to directly order compliance with the load allocations in a TMDL." EPA and NOAA considered all of the documents listed above, as well as the documents shown in the enclosure.

Author: Allison Castellan

Date: 11/9/2012 5:53:00 PM

Type: Insert

Range: when EPA and NOAA negotiated this milestone in the settlement agreement, we did so on the assumption that DEQ would have completed the Mid-Coast TMDLs by June 30, 2012 according to DEQ's July 21, 2010 commitment letter. That letter also states that other interim benchmarks such as providing additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets would have been achieved by January 31, 2011. EPA and NOAA recognize the complexities of pursuing this new, innovative, IR-TMDL approach. While we applaud your achievements including collected and beginning to analyze data necessary for the TMDL development, organizing and holding many stakeholder advisory and technical meetings, and outlines promising approaches, we are very disappointed that many of the original deadlines have slipped significantly. DEQ has yet to adequately complete the benchmarks noted above and does not anticipate completing the Mid Coast TMDLs until Summer 2013 or later. There has been limited progress on developing and identifying the best practices which are key to meeting both water quality standards and the outstanding coastal nonpoint program conditions. Therefore, without a completed Mid-Coast TMDL that includes specific BMPs and better understanding of how the TMDL process will address landslide prone and road issues, EPA and NOAA do not have sufficient information to conclude if the IR-TMDL approach would enable Oregon to achieve and maintain water quality standards or satisfy the additional management measures for forestry condition on its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns that the current approach would enable the state to achieve either goal. The enclosed assessment document provides additional information on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current short-comings, and what the state needs to do to satisfy

its remaining additional management measures for forestry condition and achieve and maintain water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems. According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we've shared with the state in the past, we must receive all information from Oregon satisfying its three remaining conditions by June 30, 2013, in order to meet this deadline. EPA and NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by the November 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 funding and Clean Water Act Section 319 program.

Author: Allison Castellan

Date: 11/9/2012 5:53:00 PM

Type: Paragraph Property

Format Description: Formatted: Normal

Range: when EPA and NOAA negotiated this milestone in the settlement agreement, we did so on the assumption that DEQ would have completed the Mid-Coast TMDLs by June 30, 2012 according to DEQ's July 21, 2010 commitment letter. That letter also states that other interim benchmarks such as providing additional detail on the IR-TMDL process, including describing how the TMDL approach will address NOAA and EPA's concerns with landslide prone areas and road density and maintenance, and providing examples of the types of "safe harbor" BMPs Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads and meet load allocations and surrogate targets would have been achieved by January 31, 2011. EPA and NOAA recognize the complexities of pursuing this new, innovative, IR-TMDL approach. While we applaud your achievements including collected and beginning to analyze data necessary for the TMDL development, organizing and holding many stakeholder advisory and technical meetings, and outlines promising approaches, we are very disappointed that many of the original deadlines have slipped significantly. DEQ has yet to adequately complete the benchmarks noted above and does not anticipate completing the Mid Coast TMDLs until Summer 2013 or later. There has been limited progress on developing and identifying the best practices which are key to meeting both water quality standards and the outstanding coastal nonpoint program conditions.

Author: Allison Castellan

Date: 11/13/2012 9:25:00 AM

Type: Property

Format Description: Formatted: Font: 12 pt, Not Highlight

Range: June 30, 2012

Author: Allison Castellan

Date: 11/9/2012 5:53:00 PM

Type: Property

Format Description: Formatted: Font: 12 pt

Author: Allison Castellan
Date: 11/9/2012 5:46:00 PM
Type: Delete

Range: As a crucial part of development of these IR TMDLs, DEQ agreed to develop the Mid-Coast Sub-basins IR TMDLs by June 30, 2012 using the new approach in order to demonstrate that DEQ can and will use TMDLs to control water pollution from logging. Specifically DEQ agreed to identify specific nonpoint sources (including logging) and best management practices (including the logging practices) necessary to meet the TMDL load allocations and issue these load allocations as enforceable orders to significant land owners and agencies. However,

Author: Allison Castellan
Date: 11/9/2012 5:28:00 PM
Type: Unknown

Range: DEQ was unable to complete the draft or final TMDLs or even specific BMPs for addressing the NPS sources, as of the date of this letter. Therefore, EPA and NOAA cannot evaluate whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition.

Author: Allison Castellan
Date: 11/9/2012 5:55:00 PM
Type: Delete

Range: NOAA and EPA recognize that the implementation-ready (IR) TMDL effort is a new and complicated undertaking. DEQ has made significant progress including: In March 2012, DEQ convened a series of Local Stakeholder Advisory Committee meetings for key stakeholders to provide input on the development of Mid-Coast Basin TMDLs and to assist with planning implementation-ready TMDLs. The LSAC is meeting regularly from March 2012 to June 2013. Three separate Technical Working Groups (TWGs) began meeting monthly beginning in late spring to provide technical input into the development of bacteria, temperature and sediment TMDLs. EPA provided contractor support for the facilitation of these meetings. In Fall, 2012, Light Detection and Ranging (LiDAR) data was collected and analyzed, resulting in a map of existing landslides classified by slide type, material, age and other attributes. This technology and data analysis provides accurate data for identifying and mapping landslides, unmaintained roads and vegetation attributes which can be used in both the temperature and sediment TMDLs. EPA provided contractor support. DEQ developed and shared with the LSAC and TWGs conceptual technical approaches for the bacteria, temperature and sediment TMDLs. Specific accomplishments for each TWG included: Bacteria TMDLs Identified initial estimates of parameter values for bacteria source modeling Selected methods to for developing TMDLs for freshwater, estuaries, and beaches Compiled available beach data Reviewed and discussed example load duration curve calculations Met with Big Elk Creek landowners and SWCD Temperature TMDLs Reviewed and provided input to DEQ on data and available model calibration results, including assumptions and uncertainties Reviewed and discussed canopy density and how it is used in

the Heat Source model Identified Site Potential Vegetation geographic regions and vegetation type categories. Reviewed RipStream site modeling results for two sites. Discussed (in overview) stream channel morphology and cold water refugia Sediment TMDLs Developed draft forest roads approach for TWG review and comment Scheduled and held Forest Roads sub-group meeting Began developing details for forest roads approach Currently working to develop integrated roads document Assembled agricultural roads sub-group

Author: Allison Castellan

Date: 11/9/2012 6:13:00 PM

Type: Delete

Range: Oregon has encountered many unanticipated challenges including: DEQ's authority to require and enforce management measures is key for EPA and NOAA to approve Oregon's Coastal Nonpoint Source Pollution Control Program (CNPCP) in Oregon under CZARA Section 6217 and also is key to implementing TMDLs that would lead to meeting WQS. We support DEQ's authority whether DEQ takes the direct approach of identifying the management measures (MMs) needed to meet the TMDL targets or whether DEQ takes the indirect approach of giving DMAs the first shot at identifying the MMs and then DEQ determines their adequacy and whether additional MMs are needed. If DEQ is taking the indirect approach, then DEQ needs to clarify the process and criteria that DEQ will use to evaluate DMA identified MMs and reaffirm DEQ's commitment and authority to require MM's if needed to meet IR TMDL targets/WQS.

Author: Allison Castellan

Date: 11/9/2012 6:13:00 PM

Type: Delete

Range:

Author: Allison Castellan

Date: 11/9/2012 6:22:00 PM

Type: Insert

Range: As we do not want to see the state lose critical funding that supports water quality and habitat protection,

Author: Allison Castellan

Date: 11/9/2012 6:22:00 PM

Type: Delete

Range: W

Author: Allison Castellan

Date: 11/9/2012 6:22:00 PM

Type: Insert

Range: w

Author: Allison Castellan

Date: 11/9/2012 6:15:00 PM

Type: Delete

Range: Pollution Control

Author: Allison Castellan

Date: 11/9/2012 6:22:00 PM

Type: Insert
Range: continues to be

Author: Allison Castellan
Date: 11/9/2012 6:22:00 PM
Type: Delete
Range: is

Author: Allison Castellan
Date: 11/9/2012 6:16:00 PM
Type: Delete
Range: Pollution Control

Author: Allison Castellan
Date: 11/9/2012 2:23:00 PM
Type: Delete
Range: John King

Author: Allison Castellan
Date: 11/9/2012 2:23:00 PM
Type: Insert
Range: Margaret Davidson

Author: Allison Castellan
Date: 11/9/2012 2:24:00 PM
Type: Delete
Range: Deputy

Author: Allison Castellan
Date: 11/9/2012 2:23:00 PM
Type: Insert
Range: Nina Bell, NWEA

Document Comments
Total Comments: 11

Author: Allison Castellan
Date: 11/9/2012 3:01:00 PM
Initial: AC
Range: The settlement agreement says we are to provide ODEQ an assessment. The remaining programs are all under DEQ's control so may be appropriate just to address the letter to DEQ and cc' OR CZM program in DLCD.
Scope: Mrs. Bob Bailey Patty Snow, ManagerAdministrator Oregon Coastal Management Program Coastal DivisionDepartment of Land, Conservation and Development635 Capitol Street, NE Suite 150Salem, OR 97301

Author: Allison Castellan
Date: 11/9/2012 3:01:00 PM
Initial: AC
Range: Settlement agreement says we send copy to Plaintiff. Therefore, Nina get's a cc. Don't think we need to include plaintiff's counsel too but perhaps lawyers feel otherwise.
Scope: Paul A. Kampmeier, Staff AttorneyWashington Forest Law Center615 Second Avenue, Suite 360Seattle, Washington 98104Allison LaPlantePacific Environmental Advocacy CenterLewis and Clark Law School10015 SW Terwilliger BlvdPortland, Oregon 97219Nina Bell, Executive DirectorNorthwest Environmental AdvocatesP.O. Box 12187Portland, Oregon 97212-0187

Author: Allison Castellan
Date: 11/9/2012 3:01:00 PM
Initial: AC
Range: The cover letter can covey a few main points but I think it would be best to leave a lot of the detail to an enclosure to keep the letter, itself, short and sweet.
Scope: enclosed

Author: Allison Castellan
Date: 11/9/2012 3:01:00 PM
Initial: AC
Range: We may want to remove this date if we won't get the final letter out in time.
Scope: December 31, 2012

Author: Allison Castellan
Date: 11/9/2012 5:04:00 PM
Initial: AC
Range: Don't think we need to spell these out here. Our assessment should speak to them which will show that we have considered them. If we want, we could consider including an appendix listing all documents we considered as an enclosure and referencing that in the above sentence. Also, we HAVE NOT considered the mid-coast TMDLs the state hasn't developed them yet. Our assessment needs to note this clearly that

deadlines have slipped and we do not have the documents we believed we would at this point.

Scope: EPA was to base the initial assessment on Oregon's July 2, 2010, Attorney General's Opinion, the July 26, 2010, Oregon Department of Environmental Quality's (DEQ) commitment letter, the schedule for implementing the Oregon Coastal TMDL approach, and the Mid-Coast Basin TMDLs implementing the Oregon Coastal TMDL Approach.

Author: Allison Castellan
Date: 11/9/2012 3:01:00 PM
Initial: AC
Range: What enclosure?
Scope: enclosure.

Author: Allison Castellan
Date: 11/9/2012 5:52:00 PM
Initial: AC
Range: Add more specifics about the temp and sed. TMDLs? I'm not sure what the latest deadline is these days.
Scope: completing the Mid Coast TMDLs until Summer 2013 or later

Author: Allison Castellan
Date: 11/9/2012 5:59:00 PM
Initial: AC
Range: I think some of the high points can be integrated into our enclosed assessment but we don't need to include a laundry list. The state (and plaintiff) knows what they've done. They don't need us to tell them again. Instead, we need to provide some indication if these are headed in the right direction, and if so, what they need to continue to do to ensure the requirements are met, and if not, what do they need to do to take corrective action.
Scope: Assembled agricultural roads sub-group

Author: Allison Castellan
Date: 11/9/2012 6:13:00 PM
Initial: AC
Range: Some of these points may be better integrated into the enclosure.
Scope: Oregon has encountered many unanticipated challenges including: DEQ's authority to require and enforce management measures is key for EPA and NOAA to approve Oregon's Coastal Nonpoint Source Pollution Control Program (CNPCP) in Oregon under CZARA Section 6217 and also is key to implementing TMDLs that would lead to meeting WQS. We support DEQ's authority whether DEQ takes the direct approach of identifying the management measures (MMs) needed to meet the TMDL targets or whether DEQ takes the indirect approach of giving DMAs the first shot at identifying the MMs and then DEQ determines their adequacy and whether additional MMs are needed. If DEQ is taking the indirect approach, then DEQ needs to clarify the process and criteria that DEQ will use to evaluate DMA identified MMs and reaffirm DEQ's commitment and authority to require MM's if needed to meet IR TMDL targets/WQS.

Author: Allison Castellan
Date: 11/9/2012 6:25:00 PM
Initial: AC

Range: I think she would be Daniel's equivalent.
Scope: KingMargaret Davidson

Author: Allison Castellan
Date: 11/13/2012 1:15:00 PM
Initial: AC
Range: Add something about extent of TMDLs and types?
Scope: new development management measure requirements,